

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
2001 SPECIAL 301 REPORT
THAILAND

EXECUTIVE SUMMARY¹

The business of optical media piracy is growing and thriving in Thailand. Pirate production capacity has roughly doubled in the past year; pirate product occupies an increasing share of the domestic market, except in sectors for which it has wiped out the legitimate market almost entirely; and Thailand remains one of the largest sources of pirate CDs and videogames exported to markets worldwide. All this has occurred despite active government anti-piracy enforcement efforts, including a series of raids on optical disc factories, and a specialized intellectual property court that has nearly eliminated the backlogs and delays that used to make the Thai judicial system an enforcement bottleneck. Clearly more enforcement resources, better coordination, and new legal tools are all needed if Thailand is to respond more effectively to its mushrooming optical media piracy problem. In particular, the strong optical media regulatory legislation which has reportedly been drafted must be enacted as promptly as possible, and then aggressively implemented, or Thailand will remain a safe haven for the international criminal syndicates that dominate optical media piracy. While the slowly growing willingness of the Intellectual Property and International Trade Court to sentence major commercial pirates to jail is encouraging, the fate of these sentences now rests with a Supreme Court whose record on piracy issues is quite uneven. Thailand also needs to tackle its persistent cable piracy problem, crack down on unacceptably high levels of institutional piracy of business software applications, and step up to the new challenge of Internet piracy. To facilitate the monitoring of these critical enforcement, judicial, and legislative developments, USTR should maintain Thailand on the Special 301 Watch List for 2001.

¹ For more details on Thailand's Special 301 history, see IIPA's "History" Appendix to filing.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 – 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	24.0	60%	21.0	55%	19.0	50%	19.0	50%	19.0	65%	29.0	65%
Sound Recordings / Musical Compositions	16.0	45%	6.0	40%	9.1	35%	15.0	40%	10.0	40%	5.0	13%
Business Software Applications ²	47.0	78%	66.5	81%	39.4	82%	75.5	84%	153.8	82%	80.2	82%
Entertainment Software ³	130.5	98%	116.3	95%	93.5	92%	86.4	85%	75.0	82%	73.3	80%
Books	33.0	NA	33.0	NA	28.0	NA	32.0	NA	32.0	NA	32.0	NA
TOTALS	250.5		242.8		189.0		227.9		289.8		219.5	

OPTICAL MEDIA PIRACY

The Problem Continues to Grow...

The most serious piracy problem in Thailand, and the one that afflicts all sectors of the U.S. copyright industry, is optical media piracy: the unauthorized production, distribution and export of copies of copyrighted materials in formats such as audio compact disc, video compact disc (VCD), Digital Versatile Disc (DVD), and CD-ROMs, which are used to carry business software applications, entertainment and videogame products, audiovisual works, recorded music and literary material.

Pirate optical media production within Thailand, a rarity just a couple of years ago, is now firmly entrenched, and growing rapidly. Industry estimates that there are some 43-50 optical media plants in the country (up from 23 reported last year). Some are in or near Bangkok, while others are in more remote areas, particularly near the frontiers with Indochina and Burma. One pirate plant is located directly opposite a major Defense Ministry office in Muangthong Thani, Nonthaburi province. Many factories have more than one production line, and estimates of their total annual production capacity run as high as 200-300 million units (more than a doubling from last year's estimates). In a country whose market can absorb an estimated 15 to 20 million units per year of legitimate copies in these formats, it is obvious that Thai pirate production, besides completely dominating the domestic market, also fuels a thriving export trade.

The impact of pirate optical media syndicates in Thailand transcends the boundaries between different market segments. The motion picture industry estimates that 70 percent of the video CDs on the market are pirate, while unauthorized DVDs are also beginning to turn up in Thailand. Pirate market share for recorded music also continues to rise, to an estimated 45% for 2000. There can be virtually no legitimate market for videogames in optical media formats in Thailand, since a glut of pirate product on the market – nearly all of it locally produced – has

² BSA loss numbers for 2000 are preliminary.

³ IDSA estimates for 2000 are preliminary.

driven street prices down to the level of US\$0.75 per piece for CD-ROMs for use in Sony PlayStation® consoles, for instance.

Pirate optical media products are readily available at retail throughout Thailand. Pirate music CDs, for example, can be found in markets in Bangkok, in other cities, and in tourist areas. While pirate audiocassettes are widely sold as well, this format occupies a shrinking share of the market; while the number of pirate cassettes seized in 1998 outnumbered CD seizures by more than six to one, for 2000 the local recording industry reports that more CDs than cassettes were seized. The glut of pirate CDs of international repertoire on the market has driven the street price down to about Bt 150 (US\$3.50). Overall, RIAA estimates that 45% of international recorded music product in the Thai market is pirate, up from 40% in 1999 and 35% in 1998.

Thailand was slower than some of its neighbors to migrate from the videocassette format to VCD for home video products, but by now the VCD format predominates in the pirate market. In the major cities, pirate DVDs are starting to appear in increasing numbers. In all, nearly 850,000 pirate optical discs of audiovisual product were seized in 2000. MPA estimates that about 60% of all audiovisual product in Thailand is pirate, up from 50% in 1998; estimated losses due to piracy have also increased, from \$19 million in 1998 to \$21 million in 1999 to \$24 million in 2000. These losses include damage to the theatrical box office caused by the widespread availability of pirate video versions of films that have not yet been released in Thai cinemas. The damage is increased by the fact that 90% of pirate VCDs now have a soundtrack in the Thai language. Pirate product in both VCD and videocassette formats can readily be found in major shopping areas in Bangkok such as Panthip Plaza, Tawanna, Seri Center, Secon Square, Future Park Rangsit, and others. Street vendors do a brisk business in both VHS and optical disc formats in night markets, selling from catalogs and photo spreads and keeping their inventory in a separate location to frustrate enforcement efforts. Conditions are similar in other major cities and tourist centers. The going price for pirate VCDs is about US\$2-3.

Pirate versions of business software applications may be found at a number of stores in Bangkok. Similar conditions obtain for entertainment software, which also suffers a persistent problem of sales of illegally copied games on CD through Internet Websites based in Thailand. Over 213,000 pirate CD-ROMs of videogames in the PlayStation format were seized in Thailand in 2000.

Thai optical media piracy is an international, not just a domestic, concern. Both the volume and the scope of export of pirated optical media products from Thailand are nearly unmatched. During 2000, some three million pirate music CDs originating from Thailand were seized in Paraguay alone; another million were intercepted in Germany during the year. A single shipment of Thai-produced pirated PlayStation videogames seized in Frankfurt amounted to 116,000 units in 11 crates, weighing two and one-half tons and valued at over US\$5 million; it was en route to Mexico.⁴ Countries as far flung as Sweden and South Africa report that Thailand is the major source of pirated interactive entertainment software seized by their customs officials.

The source of the optical media piracy that is distorting markets both within Thailand and around the world is a well organized, well financed group of syndicates with strong international connections. Nationals from Taiwan, Macau, Malaysia and China have been detained in connection with the operation of factories that have been raided in Thailand. Initially financed

⁴ "PS Software Seizure," Game Week, April 3, 2000.

from abroad, the syndicates develop strong political ties with local and national figures in Thailand, and their plants are often well protected, both politically and (increasingly) in terms of armaments. The syndicates have developed extensive distribution networks, both for the Thai retail market and for export. Their retail operations, especially for pirate CDs, rely increasingly upon children under the age of 15 to staff stalls and other outlets, since they know that restrictions on the prosecution of juveniles make enforcement more complicated.

...Despite an Enforcement Response

The continued astronomical growth rates of optical media piracy in Thailand are due in part to the efforts of authorities in neighboring countries to crack down on this illegal trade. The growth in Thailand is especially remarkable because it has occurred despite one of the more aggressive enforcement efforts seen in any country in the region. Thai officials, who began to conduct raids on pirate optical media plants in July 1999, carried out at least 16 such raids during 2000. One of the most productive series of raids took place in the Bangkok area on May 2-3, and turned up a full pirate stamper replication service. Records seized at the Mercury Bay facility during this campaign indicated that the plant was turning out some 900 stampers per month – master copies of titles such as “Star Wars Episode I” and “The Matrix,” from each of which some 100,000 pirate VCDs could be produced. Significantly, seven Malaysian nationals and one Thai were arrested at the scene.

Perhaps most remarkably for the region, many of these raids have been followed up with prosecutions and with swift action by Thailand’s specialized Intellectual Property and International Trade Court. To date, some fifteen people arrested in connection with the factory raids have been sentenced to jail terms of up to one year, and the trial court (the Central Intellectual Property and International Trade court) did not suspend any of the sentences. However, all the sentences were appealed, and no jail time has yet been served by any of the pirates. Still, this is an encouraging result in a country in which even suspended jail terms for copyright pirates were virtually unheard of prior to 1998.

That the pirate optical media problem in Thailand has grown so rapidly in the face of such an unprecedented level of enforcement, prosecution and sentencing testifies to the enormous profits to be made in the piracy business, and to the tenacity of the criminal syndicates determined to reap those profits. The positive developments seen in the past year are simply nowhere near enough to turn the tide. Clearly, enforcement efforts will have to be intensified, given more resources, and sustained over a considerable period of time before Thailand can hope to reverse the trend. Tougher and more consistent sentencing of individuals involved in optical media piracy, including major distributors and exporters as well as manufacturers, will also be required.

Needed: A New Legal Tool

Thailand must also emulate some of its neighbors by adopting a comprehensive regulatory regime governing both the importation of the equipment and raw materials needed to make pirate optical media products, and also the operation of optical media production facilities. Long reluctant to embark on such a step, the Thai government’s position changed almost overnight in late 1999 in the wake of a scandal over the involvement of the Prime Minister’s driver in piracy (the so-called “PM scandal”). Since then, Thai officials from a number of agencies have been working with private sector advisors and others to draft comprehensive legislation. IIPA understands that

drafting is now complete. Reportedly, the draft bill builds on the recently enacted legislation in Hong Kong and Malaysia, and covers both equipment and raw materials and requires the use of Secure Identification (SID) codes on all optical media products produced in Thailand. However, to date, more than a year after work began on the new legislation, it still has not been formally approved by the Minister of Commerce, much less by the full Cabinet. Presentation to the Thai parliament lies even further in the future.

While we applaud the Thai government's recognition that a comprehensive regulatory regime is needed, the extremely slow progress toward putting that regime in place is cause for concern. This issue must take a top priority on Thailand's legislative agenda. The Thai legislative process is normally quite protracted; strong pressure from the responsible departments will be needed if the new legislation is to come into effect quickly enough to be of maximum usefulness against the growing threat of optical media piracy. Prompt enactment and implementation of this legislation should give enforcement authorities a powerful new tool to wield against the optical media piracy syndicates. It could also lessen the attractiveness of Thailand as a site for locating future pirate facilities.

EFFECTIVE ENFORCEMENT: MORE NEEDS TO BE DONE

Historically, anti-piracy enforcement in Thailand has been plagued by a lack of cooperation among enforcement agencies. This began to change in 1999, and the process accelerated toward the end of that year, when, in the wake of the "PM scandal," the Department of Intellectual Property (DIP), carrying out a directive of a new Deputy Minister of Commerce, set up nine task forces to carry out ongoing investigations and raids in different parts of Thailand. All police units in Bangkok and in tourist areas throughout the country were empowered to enforce the copyright law and ordered to give such enforcement a high priority. All seized pirate product was ordered destroyed on a quarterly basis, a response to the aggravating practice of returning pirate inventory to retailers upon payment of a nominal fine, a policy that clearly violated Thailand's obligations under the WTO TRIPS Agreement.⁵ Under the new setup, the tempo of enforcement activity increased dramatically, as different agencies competed to carry out raids and to distance themselves from any hint of complicity with pirates.

These positive trends continued into 2000. A key coordinating body established by the government in 1998 – the Infringement of Intellectual Property Suppression Center – continued to meet with industry representatives and helped to focus enforcement efforts. In addition, a special task force created in the wake of the PM scandal was empowered to carry out anti-piracy IP enforcement activities around the country, and has been an effective participant in the anti-piracy effort. These bodies should be made permanent. But much more needs to be done before the Thai enforcement and prosecution apparatus can be considered truly effective.

Coordination should be improved still further through the adoption and implementation of a nationwide anti-piracy plan. More enforcement manpower is needed to tackle what is essentially a nationwide problem, and anti-piracy enforcement must be given a higher priority throughout the government, including at the provincial level. The Department of Intellectual Property should be given the authority to carry out enforcement actions, not just to coordinate them; this would assist

⁵ This remains a problem with respect to seized product not specifically identified by right holders as infringing. Thai authorities should be encouraged to destroy seized product more consistently and on a more frequent schedule.

the existing enforcement agencies, like the Economic Crimes Investigation Division (ECID) of the National Police, which need more resources. Customs, foreign trade, domestic trade, revenue and consumer protection agencies need to be more fully integrated into the overall enforcement effort. Thai enforcement authorities should also be strongly encouraged to improve on their performance on several issues identified in the Thai-U.S. IPR Action Plan of 1998, including improved border controls; more effective use of tax, fraud and other laws against pirate organizations; and devoting sufficient resources to enforcement across the board.

Thailand's success in converting raids into successful prosecutions remains uneven. On the plus side, besides the aggressive prosecution of optical media factory operatives summarized above, a total of 89 prosecutions against distributors and retailers of pirate VCDs were initiated in 2000. By contrast, only seven prosecutions were launched against retail business software pirates during 2000, although seven times that many retail raids were carried out. Thailand must devote the resources needed to ensure that all serious cases of copyright infringement are brought to court promptly.

COURTS

Continued Progress Toward Deterrent Sentencing by the IP &IT Court...

For years, interminable delays, convoluted procedures, and purely nominal sentencing practices rendered the Thai court system dysfunctional in the fight against copyright piracy. The inauguration of the Central Intellectual Property and International Trade Court (IP&IT Court) in December 1997 fulfilled a longstanding commitment of the Thai government, and offered the potential to make a real difference. The new court's personnel have received specialized training; streamlined procedures have been adopted; and the court's jurisdiction is broad. Almost since its inception, it has processed cases expeditiously, thus addressing one of the main shortcomings of the old system. In 2000, the court disposed of 4059 IPR criminal cases, while a total of 4719 such cases were received; this indicates that backlogs were quite minimal. MPA reports that criminal convictions were obtained in 87 of the 89 criminal cases which it initiated during 2000, and that the other two were resolved in January 2001.

A major challenge facing the new court was whether it could break with the traditional inability or unwillingness of judges to impose deterrent penalties, including jail terms, upon convicted pirates in serious cases. In this regard, 2000 was a breakthrough year for the court, as exemplified by the fifteen unsuspended jail sentences it imposed on operatives of pirate optical media factories during the year. It also sentenced a total of six defendants to jail in two cases involving pirate warehouses and distribution centers, and imposed prison terms in three retail piracy cases as well, all without suspending the custodial sentences. All defendants appealed to the Supreme Court, however, and none has yet served any jail time; the three retail pirates received suspended sentences for the Supreme Court, while all the distribution and factory cases remain pending. The U.S. government should closely monitor the appeals in these cases, to ensure that this important step toward deterrent criminal sentencing in piracy cases has a real impact. The court should continue these firm sentencing practices as more operatives from pirate optical media plants are brought to justice. It should also continue its practice of ordering the forfeiture of optical media production equipment used to make pirate product, and should extend that forfeiture policy to other cases as well.

Another appeal that should be closely monitored involves a defendant named Yothin Krutpong, a shop owner who sold pirate optical media products — business software, VCDs and music — from his store in Panthip Plaza. In May 1999, the IPR court imposed on him the toughest sentence ever handed down for copyright piracy in Thailand: 28 months in jail, and fines totaling Bt 840,000 (US\$22,400). If the sentence is upheld on appeal to the Thai Supreme Court, where it is still pending, this defendant could be the first Thai copyright pirate ever to go to prison as a result of a criminal conviction for copyright infringement.

So far, the willingness of the IP&IT Court to impose jail terms on commercial pirates is restricted to those involved in optical media production. However, the court does appear to be imposing somewhat heavier fines on pirates than in the past. Individuals convicted of distribution roles with respect to pirate VCDs are fined about Bt 100,000 (US\$2400) on average, while VCD retailers generally face a fine of about Bt 48,000 (US\$1100). BSA reports similar results in 55 retail cases adjudicated through the first quarter of 2000, with average fines of US\$3200. By contrast, fines imposed in 129 music piracy cases resolved in 2000 averaged less than US\$1200. In 2001, the court should bring sentences on major pirate distributors up to deterrent levels, including jail terms.

In the year ahead, the court should be encouraged to continue this trend toward tougher sentencing, since a consistent pattern of such sentencing must be established in order to achieve a deterrent effect. It is worth reiterating that it falls largely upon the Central Intellectual Property and International Trade Court to fulfill Thailand's international obligation under Articles 41 and 61 of the TRIPS Agreement to impose deterrent criminal penalties on commercial copyright pirates. This internationally recognized minimum standard became fully applicable to Thailand on January 1, 2000. It is imperative that Thailand provide for, and actually impose, criminal remedies which are "sufficient to provide a deterrent" (TRIPS Articles 41 and 61), and that it provide the full panoply of criminal, civil and administrative procedures and remedies. The IP & IT Court is well positioned to advance many of these goals in the year ahead.

. . .but Mixed Results at the Supreme Court Level

The most significant Thai court decisions of 2000 on substantive copyright law and enforcement issues were rendered, not by the IP&IT Court, but by the country's Supreme Court, hearing appeals from the specialized tribunal. The results sent decidedly mixed signals regarding Thailand's commitment to fulfill its international obligations regarding the fight against copyright piracy.

Two of the cases involved book piracy, a chronic problem in Thailand that cost U.S. publishers an estimated \$33 million in 2000. The problem is centered around commercial photocopying operations that set up shop near college or university campuses and do a booming business in unauthorized copies of textbooks. Police raids against photocopying establishments in the fall of 1998 marked the first enforcement actions taken against this growing form of commercial copyright piracy. Unfortunately, in the first two of the resulting cases to be decided by the IPR Court in September 1999, the results were unsatisfactory. The IPR Court concluded that wholesale unauthorized photocopying carried out by commercial photocopying shops at the direction of students fell entirely within the exception to copyright protection for nonprofit "research and study" purposes under section 32(2)(1) of the Thai copyright law. Consequently, one case was dismissed while the other, in which the defendant had apparently stockpiled photocopies in anticipation of

future requests from students, was concluded with a nominal fine. The court also refused to allow the forfeiture of the photocopying machines used to make the unauthorized copies.

Thailand's Supreme Court rendered more satisfactory judgments in both these cases. In the case against Somsak Thanasarnsenee, the Supreme Court upheld the fine imposed by the lower court and also ordered the forfeiture of the photocopying machines used to commit the offense.⁶ In the second case, handed down in September, the Supreme Court reversed the acquittal of the defendant (Konakchai Petchdawongse) ordered by the IP & IT Court, imposed a fine of BT 100,500 (US\$2400)⁷, and ordered the forfeiture of the equipment. However, reportedly the Supreme Court decision was based on a narrow finding that the defendant had failed to demonstrate that the unauthorized copies seized had been made at the specific request of students. The decision appears to leave open the possibility that if such prior requests were documented, a for-profit commercial photocopying operation, engaged in high-volume unauthorized copying, would be able to claim the benefit of the statutory exception for copying for nonprofit "research and study" purposes.⁸ If this reading is correct, it is regrettable that the Supreme Court missed this opportunity to specifically disapprove the lower court's reading of the law, which appears not only to tolerate but even to encourage commercial copyright piracy of textbooks. Such an interpretation would raise serious questions about the ability of Thailand to fulfill its obligations under the TRIPS Agreement.

An even more disturbing Supreme Court decision involved Atec Computer and its director, who in 1999 had been fined a total of Bt 1,050,000 (US\$28,000 at then-prevailing exchange rates) for loading unauthorized copies of Microsoft® business software programs on the hard disks of computers they were selling.⁹ This was a welcome change from the light sentences imposed by the IPR court in its earlier software piracy cases, and sent a strong signal that this common form of software piracy was not acceptable in Thailand. Unfortunately, on October 16, 2000, the Supreme Court released a decision overturning the conviction, on the grounds that, because a Microsoft investigator had ordered the computer, Microsoft therefore could not have been the injured party, and indeed had "facilitated" the offense.¹⁰ To the extent that this decision casts doubt on the legal validity of "trap purchases," one of the most commonly employed techniques in investigating all kinds of piracy cases, it threatens to undermine much of the progress Thailand has made in its fight against piracy.

⁶ "Appellant fails to overturn copyright conviction," *IP Asia*, July/August 2000, at 7.

⁷ Reportedly this fine was subsequently reduced to Bt 67,000 (US\$1600).

⁸ Periera, "Supreme Court sets out what's allowed in reproduction of copyrighted text," *IP Asia* December 2000/January 2001, at 41.

"IPR Court Continues Hard Line on Pirates," *Bangkok Post*, July 7, 1999

¹⁰ "Thai Supreme Court Rules against Microsoft," *The Nation* (via Newsbytes News Network), Nov. 6, 2000.

VIDEOCASSETTE, CABLE AND PUBLIC PERFORMANCE PIRACY

Cable piracy — the unauthorized transmission of U.S. programming over cable television systems — is widespread in Thailand, especially in rural areas. Illegal decoder boxes and smart cards are widely available. Cable piracy undermines the markets for theatrical exhibition, home video, and licensing for broadcast of U.S. motion pictures. Most of the offending cable operators have strong connections with local politicians, and it is difficult to obtain enforcement. The cable piracy rate is estimated at 35%.

Also rampant is unauthorized public performance of U.S. audiovisual works, in many small hotels outside Bangkok that use in-house movie systems. Most bars in tourist areas also exhibit videos without authorization, often in “private rooms.” MPA estimates that 35% of all public performances of their member company titles in Thailand are unauthorized.

Finally, despite the advent of the VCD, VHS videocassette piracy remains a serious problem, particularly in the provinces and small towns. Pirates use VCDs, laser discs, promotional cassettes, and cassettes recorded from the screen in U.S. theaters as masters for pirate VHS versions, which are often available before the title in question has been released for theatrical exhibition in Thailand. While ongoing enforcement against retailers of pirate videocassettes is essential, the main enforcement thrust should be directed against duplication facilities for these products and against the major distributors who supply retailers. Competing pirate organizations supply videocassettes to their respective outlets, with separate distribution systems for the rental and sales markets. Masters are duplicated in facilities that often produce legitimate product part of the time, sometimes employing high-speed duplicating equipment. More sustained enforcement efforts and duplicators and distributors are needed to move videocassette piracy levels downward.

INSTITUTIONAL BUSINESS SOFTWARE PIRACY

Institutional end-user piracy, in which companies or other institutions make multiple unauthorized copies of business software for their internal operations, also occurs at unacceptably high levels in Thailand. This piracy contributes heavily to the estimated 78% piracy rate for business software applications, and the estimated \$47 million in losses this piracy inflicted on this sector during 2000. The enforcement response to this problem historically has been minimal. During 2000, the Business Software Alliance worked closely with the Department of Intellectual Property to educate the Thai business community about the need to comply with software licensing practices. A series of joint industry-government site visits to corporate end-users was part of this campaign. Clearly, without strong backing from government agencies for such educational efforts to promote respect for intellectual property rights, end-user piracy in Thailand, like retail piracy, will remain at unacceptably high levels, so this effort should be stepped up in 2001. In addition, BSA initiated ten actions against corporate end-user pirates in Thailand in 2000.

In 1998, the Thai government reissued an Executive Order requiring all government agencies to use legitimate and licensed software. This was a significant step forward in Thailand's efforts against piracy of business software. Some follow-up took place in 1999. The Business Software Alliance (BSA) conducted a series of seminars for government CIOs in Bangkok, cohosted by the Ministry of Science and Technology, and NECTEC (the National Electronics and Computer Technology Center, which is spearheading implementation of the Executive Order). The seminars

were well received, and NECTEC announced its intention to be the first agency to implement software asset management procedures and adopt good licensing practices. However, there was little follow through in 2000. The Thai government needs to revitalize its efforts to implement the Executive Order.

USE OF INTERNET AND NEW TECHNOLOGIES

In recent years, the Internet has been used more often for the marketing of pirate product in Thailand. It appears that an increasing number of international pirate organizations are establishing a presence in Thailand through which orders taken over the Internet for pirate CDs, CD-ROMs and VCDs can be fulfilled. As Internet use grows in Thailand (there are now an estimated one million Internet users in the country), Internet piracy can also be expected to increase. Thai law and enforcement practices need to be adapted to this new environment.

Accordingly, it is past time for Thailand, which participated actively in the negotiations that led to the adoption of the World Intellectual Property Organization treaties (the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty), to move promptly to ratify and implement those treaties. By updating its copyright and neighboring rights laws for the digital age, Thailand would maintain its hard-earned position of leadership within the ASEAN community on modernization of intellectual property regimes.

On the enforcement level, Thai enforcement officials need better training to understand and to be able to deal with Internet-based piracy. Designating a specialized cybercrime and Internet piracy unit could facilitate the training process. Enforcement agencies should also intensify their efforts to combat the growing problem of pirate CD-Recordable compilations of unauthorized copies of musical recordings. The Thai government also should move, in cooperation with industry, to promote public awareness of the need to respect intellectual property rights in cyberspace. In particular, the Department of Intellectual Property should work with Internet Service Providers to develop best practices and regulations that will encourage ISPs to cooperate with copyright owners to detect and deal with infringements taking place online.

LEGAL REFORM

As discussed above, the Thai government now supports the implementation of a regulatory system for optical media production equipment, raw materials, and operations. Prompt enactment of any necessary legislation, issuance of regulations, and aggressive implementation could make a major contribution to the fight against optical media piracy. Such a system should be comprehensive, including a combination of legal or regulatory measures to provide strict border controls on the importation or exportation of equipment or raw materials; licensing requirements for optical media production facilities; and vigorous enforcement, including surprise inspections and the revocation of licenses of plants used for infringing purposes.

Enactment of cable regulatory controls in Thailand is long overdue. Although the copyright law can be used against cable pirates, a regulatory system would make it easier to control cable piracy by conditioning the issuance and retention of cable licenses on compliance with copyright as in other countries. Legislation passed in January 2000 — the Frequencies Management Act — creates a National Broadcasting Commission, but selection of its members has been delayed to

March 2001 at the earliest. This commission should be appointed promptly and given the power to fight cable piracy.

Thailand is also considering broadcast legislation that includes provisions on signal theft and on the production or distribution of signal theft-related devices. The penalties proposed for these offences in the draft legislation are too weak, topping out at one year's imprisonment and a fine of Bt 2 million (US\$47,000). Stronger penalties are needed if this law is to be effective.

While Thailand has come a long way toward meeting its substantive obligations under the copyright portions of the World Trade Organization (WTO) TRIPS Agreement, it is not yet fully in compliance, especially with the critical enforcement obligations found in Part III of TRIPS. As discussed above, the IPR court is the Thai government institution most clearly responsible for fulfillment of these international obligations, but legislative changes could be needed as well, to clarify some ambiguities in the copyright act.